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In re Application of
BONNEY *et al*
U.S. Application No.: 10/502,405
PCT No.: PCT/EP03/00599
Int. Filing Date: 22 January 2003
Priority Date: 25 January 2002
Docket No.: PG4657-2 USw
For: MEDICAMENT DISPENSER

DECISION

This decision is in response to the "Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181" filed on 15 September 2006. No fee is required.

BACKGROUND

On 24 January 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a declaration in compliance with 37 CFR 1.497(a) and (b) and a \$130.00 surcharge fee must be provided. A two-month time period for response was set with extensions of time available pursuant to 37 CFR 1.136(a).

On 07 February 2005, applicants purportedly filed via facsimile a reply to the Form PCT/DO/EO/905 which was accompanied by, *inter alia*, an executed declaration and authorization to charge the required fees to Deposit Account No. 07-1392. These papers were not located in the file.

On 08 August 2006, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909) stating that the above-captioned application was abandoned because applicants failed to respond to the Form PCT/DO/EO/905 mailed 24 January 2005 within the time period set.

On 15 September 2006, applicants filed a petition to withdraw the holding of abandonment which was accompanied by, *inter alia*, copies of the documents purportedly filed via facsimile on 07 February 2005 and a copy of a "Communication Result Report" dated 07 February 2005.

DISCUSSION

Applicants claim that a response to the Form PCT/DO/EO/905 was filed via facsimile on 07 February 2005. This response included an executed declaration and authorization to charge the required surcharge fee. However, these papers were not located in the file. Moreover, USPTO financial records for the above-captioned application show that the surcharge fee has not been charged.

37 CFR 1.8 *Certificate of mailing or transmission*, states in part:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Applicants have provided a copy of the ten pages purportedly filed 07 February 2005. Applicants included a "Communication Result Report" indicating that ten pages were received at the facsimile number listed on 07 February 2005. Applicants also declare that their statement attesting to the timely transmission of the correspondence is based upon the evidence presented.

A review of the cover page of the documents purportedly filed via facsimile on 07 February 2005 shows that the proper U.S. application number, title, attorney docket number and applicants were recorded. The cover page certifies that a "Transmittal letter (2nd page in duplicate) and Combined Declaration and Power of Attorney (4 pages)" were among the papers received. Moreover, a "Certificate of Transmission by Facsimile" was listed on the cover page which was signed by Marjorie J. Pfeiffer as

transmitted on 07 February 2005.

This evidence meets the requirements of 37 CFR 1.8(b). The statement under 37 CFR 1.8(b)(3) is accepted.

CONCLUSION

Applicants' petition to withdraw the holding of abandonment is **GRANTED**.

The Form PCT/DO/EO/909 mailed 08 August 2006 is hereby **VACATED**.

The declaration originally filed 07 February 2005 is in compliance with 37 CFR 1.497(a) and (b). The surcharge fee of \$130.00 has been charged to Deposit Account 07-1392 as authorized in the response.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 22 January 2003, under 35 U.S.C. 363 and a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 07 February 2005.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.



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